

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANA GAINES,
Plaintiff,

v.

SAN FRANCISCO SHERIFF
DEPARTMENT MEDICAL STAFF,
Defendant.

Case No. [14-cv-02142-JD](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

I. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

II. LEGAL CLAIMS

Plaintiff states that sheriff’s deputies assaulted him while at San Francisco County Jail. The Due Process Clause of the Fourteenth Amendment protects a post-arraignment pretrial detainee from the use of excessive force that amounts to punishment. *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (citing *Bell v. Wolfish*, 441 U.S. 520, 535-39 (1979)). Resolving such a substantive due process claim requires courts to balance several factors focusing on the reasonableness of the officers’ actions given the circumstances. *White v. Roper*, 901 F.2d 1501, 1507 (9th Cir. 1990). These factors include: (1) the need for the application of force, (2) the relationship between the need and the amount of force that was used, (3) the extent of the injury inflicted, and (4) whether force was applied in a good faith effort to maintain and restore discipline. *Id.* To prevail on an excessive force claim, a pretrial detainee must show the use of force was excessive because it was not reasonably necessary to maintain or restore order or discipline. *See Hydrick v. Hunter*, 500 F.3d 978, 997-98 (9th Cir. 2007) (excessive force claim brought by civilly confined plaintiff), rev’d on other grounds, 129 S. Ct. 2431 (2009).

Plaintiff only states that he was assaulted by deputies and suffered serious injuries that required medical attention. Plaintiff does not provide any other details regarding the assault nor does he identify any specific defendants or their actions. The complaint will be dismissed with

1 leave to amend. Plaintiff must describe the incident, identify the defendants, the specific acts of
2 each defendant and the injuries he suffered.

3 CONCLUSION

4 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must
5 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
6 and civil case number used in this order and the words AMENDED COMPLAINT on the first
7 page. Because an amended complaint completely replaces the original complaint, plaintiff must
8 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
9 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
10 amend within the designated time will result in the dismissal of this action.

11 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
12 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
13 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
14 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
15 Civil Procedure 41(b).

16 **IT IS SO ORDERED.**

17 Dated: July 9, 2014

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20 JAMES DONATO
21 United States District Judge
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